

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Case No.:
	§	4:20-cv-00957-SDJ
GOOGLE, LLC,	§	
	§	
Defendant.	§	

STATUS CONFERENCE
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

Thursday, February 15, 2024; 10:04 a.m.
Plano, Texas

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(Continued on page 2.)

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1 February 15, 2024

10:04 a.m.

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3 P R O C E E D I N G S

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5 THE COURT: Good morning. You can be seated.

6 MR. YETTER: Good morning, Your Honor.

7 THE COURT: So we're here this morning on
8 4:20-cv-957, the State of Texas, et al versus Google LLC.
9 We're here for a status conference, and as with our other
10 hearings, we have an audio-only feed for the public of the
11 hearing.

12 And let's go ahead and get appearances from the
13 parties, and we can start with the plaintiff states.

14 MR. LANIER: Thank you, Your Honor. Mark Lanier
15 here on behalf of plaintiff states, along with, from my firm,
16 Zeke DeRose and Jonathan Wilkerson. From the AG's office, we
17 have Mr. James Lloyd; Mr. Trevor Young from Fulbright --
18 Norton Rose Fulbright. We have Ms. Geraldine Young. We have
19 Roger Alford here from -- as co-counsel. I think he's
20 technically from Notre Dame, but we don't say that to
21 anybody.

22 THE COURT: All right. Thank you, Mr. Lanier.

23 Go ahead, Mr. Yetter.

24 MR. YETTER: Thank you, Your Honor. Good morning.
25 On behalf of the defendant, Google, Paul Yetter; my

1 colleague, Mollie Bracewell; and our co-counsel from
2 Freshfields, Robert McCallum, are here for today's hearing.

3 THE COURT: All right. Thank you, counsel. So I
4 have a couple of topics that I anticipate addressing today.
5 And then, as in our prior conferences, if there's issues that
6 counsel believe we need to address that are not among my
7 topics, we can also take those up.

8 So my list includes some discussion on the
9 coordinated discovery order. As you all know, I have the
10 special master's report and recommendation. I also have a
11 filing from Google on that that helpfully brought to the
12 Court's attention an order from New York that bears on the
13 issue. And I'm sure both sides may have points to make
14 regarding the coordinated discovery order.

15 I do want to talk briefly with you all about just
16 sort of scheduling on the motion to dismiss. Because of the
17 motion practice we had on the dismissal motion and
18 resubmission of Google's second dismissal motion, and the
19 States' recent request and granting of that request for an
20 extension I think in terms of the reply, we may be looking at
21 timing on the reply, and then I want to talk about a
22 potential hearing on the dismissal motions.

23 I do also want to discuss with you all, for our
24 status conferences going forward, maybe a process for the
25 parties to identify issues or topics that they think would be

1 important for the Court to hear at each status conference.

2 And then, more broadly, I want to talk a bit
3 about -- really, at about 50,000 feet, about some of where
4 discovery is right now.

5 So that's sort of my list of topics. We'll work
6 through those. And then anything else you all think we ought
7 to discuss, we can take up.

8 So let's start with the coordinated discovery
9 order. I have the report and recommendation of the special
10 master, it includes a proposed order. Why don't I start with
11 the plaintiff states and see if there's anything you want to
12 say about that, and that includes Google's filing concerning
13 the recent New York order on shared discovery in the case and
14 whether or not it makes sense to either make an adjustment
15 based on the order in the coordination order, or to send it
16 back to the special master to take another look, I think just
17 at that issue unless we have other issues we think need to
18 be reconsidered.

19 So, Mr. Lanier, go ahead.

20 MR. LANIER: Thank you, Your Honor. And thank you
21 for your time this morning. And thank you for what you've
22 done thus far.

23 We think all parties appreciate that the special
24 master has been extremely useful, even thus far, and will
25 continue to be. And that was a lot of work to put that into

1 place. We appreciate you. We appreciate all that were
2 involved.

3 We think he produced a good order. We don't like
4 Google's effort to change the definition; we think that that
5 denudes the order. But we believe that the order itself is
6 good. I have looked at what Google filed. I have read Judge
7 Castel's order that is referenced, and I think that it's a
8 red herring. Let me explain why.

9 Judge Castel said in order to order production of
10 additional documents or documents from another case, one of
11 two factors need to be present -- I'm sure you read his order
12 as well -- it's a stipulation between parties or it's got to
13 be relevant to the underlying dispute. We certainly have
14 relevance he could not find. Ours has been found not just in
15 our case and in our arguments, but if you go to Judge
16 Gilstrap's *Infernal Technologies v. Microsoft* 2019 opinion
17 that dealt with infringement contentions from prior
18 litigation with the same products, and expert reports and
19 things of that nature, Judge Gilstrap's opinion says that
20 there's absolutely a relevance because it bears on the
21 parties' understanding of the claims; it may also be relevant
22 if it's inconsistent in how they make a claim in one place
23 versus another.

24 So even under the reasoning of Judge Castel's
25 order, we believe that we should be entitled to this

1 discovery in this manner as set forward in our coordination
2 arguments and in the report and recommendation.

3 My bottom line, looking at it as an old guy -- I
4 was laughing -- my team didn't even understand that I started
5 practicing law and trying cases when you had to file your
6 interrogatory answers in court, when your expert reports were
7 filed in court often. But what a coordination order exists
8 to do is to allow the parties to proceed with speed and
9 efficiency over the burden and cost that comes from something
10 independent.

11 Coordination orders do not exist to put handcuffs
12 on you and tell you how to run discovery in your court.
13 Coordination orders do not exist to dictate what the Eastern
14 District of Texas must or must not do as per the rulings of a
15 sitting judge in New York, even one on senior status, or, for
16 that matter, a judge in Virginia. We're guided by the local
17 rules, by the Federal Rules of Civil Procedure, and by your
18 discretion and judgment as you apply those rules.

19 And so the question becomes what's the most
20 expedient, efficient way for us to get information and data
21 which the Eastern District prioritizes, as opposed to the
22 cost and burden associated with getting that data another
23 way.

24 So we believe that discovery is not a game of hide
25 and seek; that there's information that we're entitled to

1 get; that the positions that Google takes should not be
2 allowed to vacillate between one case and a separate case;
3 and that if it's non-privileged information, under Federal
4 Rule of Civil Procedure 26(b)(1), we ought to be entitled to
5 it. And so we like the special master's order.

6 We don't think the Google judge has -- Judge
7 Castel, with due respect, we don't think that he changes the
8 complexion of this at all. And we would urge you to adopt
9 the report and recommendation of the special master and allow
10 us to get the discovery we're entitled to in the quickest,
11 most efficient way possible. Thank you.

12 THE COURT: And, Mr. Lanier, let me follow up real
13 quick with one --

14 MR. LANIER: Yes.

15 THE COURT: -- question for you. I just want to
16 make sure I understand your argument. It sounds to me like
17 your view is we could enter the coordination order as
18 proposed by the special master, including the language on
19 shared discovery, and not be, if you will, in tension or
20 conflict with Judge Castel's order because of the discussion
21 in his order about one reason that you could allow this type
22 of shared discovery is when there are requests and response
23 relevant to the underlying dispute.

24 Do I have you correct? You think it would not be
25 in tension with that.

1 MR. LANIER: You have me correct, Your Honor. Now,
2 I do realize that paragraph 10 of the report and
3 recommendation does say it would go into effect when it was
4 entered by the MDL and by you. And that delay could be an
5 issue that needs to be dealt with because Judge Castel may or
6 may not agree to enter the order and, by the same token, he
7 may not rule on it timely, it may just get caught up in the
8 busyness of life.

9 But we think you're absolutely fine entering a
10 coordination order for your court, for this case, to make
11 this as speedy and efficient as possible between the parties.

12 THE COURT: All right. Thank you, Mr. Lanier.

13 MR. LANIER: Thank you, Judge.

14 THE COURT: Mr. Yetter? I took your filing, by the
15 way, to communicate that other than the issue regarding
16 shared discovery that you identified, and Judge Castel agrees
17 in the order, there isn't anything else about the
18 magistrate's recommended order that you had an issue with.

19 MR. YETTER: That is correct, Your Honor. Thank
20 you again for the chance to speak at this status conference.

21 We -- there are many things that we may not agree
22 on, but there's one thing that I think we do agree with
23 counsel in his comments, that your choice of special master
24 was on the mark. He has been careful. He was thorough,
25 efficient, and his ruling is thoughtful.

1 At our last hearing, Your Honor, I analogized him,
2 he might be like the second or third quarterback, and that
3 you were the Dak Prescott. And you corrected me by saying
4 Patrick Mahomes. And after last week, after last week's
5 game, it's clear that I was completely off the mark and
6 Patrick Mahomes is the right analogy. But -- and my
7 colleague, Rob McCallum, he's the one that argued this to the
8 special master.

9 But the one thing -- and I will cede just briefly
10 to him in a minute. The one thing I will say, Your Honor, is
11 the arguments that we just heard from counsel that this Court
12 doesn't need to pay attention to a senior judge in New York
13 or to a magistrate judge in Virginia are the same type of
14 arguments that Special Master Moran heard on a lot of
15 different topics. And Special Master Moran was very careful
16 to take into account the fact that this Court is not alone.

17 We're not -- this case is not an island all by
18 itself. There's three connected cases. This order is a
19 coordination order between two particular cases and two
20 particular judges. And I think, to his credit, Special
21 Master Moran was very careful about considering and then,
22 very much we think in the respects that he did, aligning the
23 cases.

24 And the only suggestion we had was that this Court
25 give Special Master Moran the chance to consider an order

1 that literally came out minutes before he issued his
2 recommendation, report and recommendation. And the
3 plaintiffs' argument today that he shouldn't be able to
4 consider that is -- we don't think has merit. He may come to
5 a different opinion than what we suggest, certainly, what we
6 believe, but the Court's process that you set up was this was
7 supposed to be for the special master to consider to make a
8 report and recommendation to you. Patrick Mahomes is going
9 to make the final call, Your Honor, but this is something
10 that you've given to him to give you a recommendation.

11 And I will pass to my colleague on any of the
12 details if the Court wants to question it.

13 THE COURT: Oh, right. Is there something else,
14 Mr. McCallum, that you wanted to visit about with regard to
15 the order?

16 MR. MCCALLUM: Just one or two points, Your Honor,
17 if I may.

18 THE COURT: Okay. Go ahead.

19 MR. MCCALLUM: Your Honor, if I may just build very
20 briefly on the comments of my co-counsel, Mr. Yetter, and
21 suggestion that the argument that has been made by the
22 plaintiffs around this Court should not be handcuffed by the
23 orders of other courts. And this is, as Mr. Yetter said, an
24 issue that was raised by plaintiffs' counsel before the
25 special master, and it was directly addressed in the context

1 of the recommendation regarding expert reports. The special
2 master said in his report and recommendation the principles
3 of comity and coordination between the three actions require
4 approaching this issue in the same way.

5 And we would suggest to the Court, respectfully,
6 that that same logic should apply here; that we should be
7 able for coordination and to not knowingly encourage the
8 Court to enter any orders that are inconsistent in any way
9 with the orders entered by Judge Castel or Magistrate Judge
10 Anderson.

11 I would also just add that in connection with the
12 suggestion by plaintiffs' counsel that there's some kind of a
13 game of hide and seek here, that Google is somehow taking
14 inconsistent positions, I would point out to the Court that
15 Google has already produced its own interrogatory responses,
16 its responses to interrogatories propounded by the DOJ.
17 Those have been produced in the MDL and those have also been
18 produced to the Texas plaintiffs as well. So there's no
19 suggestion here that Google is trying to hide the ball.

20 And the final point I would make is that, as Your
21 Honor alluded to, this is really just a very narrow issue
22 that we would like to give the special master an opportunity
23 to review. I think you saw from our papers, the timing, that
24 the orders came down within half an hour of each other. We
25 think that the right and prudent course of action here, Your

1 Honor, is to give the special master an opportunity to
2 revisit and review this very specific issue and give us his
3 views.

4 That's all unless the Court has any questions.

5 THE COURT: All right. No. Thank you,
6 Mr. McCallum.

7 MR. MCCALLUM: Thank you.

8 THE COURT: Mr. Lanier, is there anything else the
9 States wanted to say writ large about the report and
10 recommendation and proposed coordination order?

11 MR. LANIER: Uh, yes. The argument that I'm
12 making, I don't know if it's the same argument I made to
13 Special Master Moran or not. I mean, I made the argument, so
14 maybe it is, but it certainly wasn't in these terms because
15 it's so much clearer in my head today.

16 The magistrate in Virginia doesn't tell you how to
17 do the discovery in your case. The judge in New York doesn't
18 tell you how to do the discovery in your case. If they want
19 to enter an order that says we cannot share what we have in
20 this case with those parties in their courts, they can enter
21 that order, and we would need to abide by that order, but
22 they can't tell you or Google what you can or cannot order
23 Google to do in this case, and that's the argument that I'm
24 trying to make.

25 And so I don't know the point in sending this back

1 to Special Master Moran to reconsider in light of the Google
2 case. You answered -- you asked me a question that reflected
3 my understanding of that Google order.

4 THE COURT: Um-hum.

5 MR. LANIER: But even aside from that, that's not
6 the issue in our case. The issue in our case is what can we
7 do in this case. We can't share in New York, fine. We can't
8 share in Virginia, fine. We'll honor the Court's rulings in
9 those cases. But what you decide in this case is totally
10 independent of what the magistrate determines in Virginia.

11 THE COURT: All right. Thank you, Mr. Lanier.

12 I think I've got both sides' positions on that.
13 And I think we've covered the only issue the parties felt we
14 needed to cover with regard to the proposed coordinated
15 discovery order.

16 And I want to move to talk about the motion to
17 dismiss just in terms of scheduling, but I also want to say
18 something more broadly about the local rules because we have
19 some motion practice on that. And just to be clear about
20 that, the parties are, I'm sure, familiar with the Court's
21 ruling on that, which was that there was not an impediment
22 under Fifth Circuit precedent for Google to file a second
23 motion to dismiss under Rule 12, but that we -- you know, but
24 that there was an issue of running afoul of a particular
25 local rule.

1 And for both parties going forward in this case, I
2 know you're all aware of our local rules, again at about
3 50,000 feet, this Court has a fork in the road with regard to
4 local rules. I'm either going to enforce them or I'm not.
5 And the problem becomes if you go down what I think is kind
6 of a slippery slope of sort of enforcing them or, you know,
7 finding circumstances where I'm effectively not enforcing
8 them -- and I distinguish that from circumstances where the
9 local rules themselves provide some discretion in the way the
10 rule reads and what the circumstances may be -- but I want
11 the parties to know that this was a situation where for both
12 sides going forward if, you know, we expect you're going to
13 follow the local rules and, you know, where there is
14 divergence from that and it's an issue, the Court is going to
15 be committed to following and implementing the local rules.

16 With that said, what that -- the effect of that was
17 to sort of move the scheduling a little bit. And the States'
18 response is now due on February 21, which moves a little bit
19 from the scheduling order. In the scheduling order, we had
20 built in for Google's reply, basically, a 14-day period, but
21 now that period is less than that, it's more like about 8
22 days. And so the parties will know that I did not
23 automatically move the States' date to respond because my
24 view was if the States are comfortable responding within the
25 time limit we had, then we'll proceed in that manner, but I

1 was open to the States asking for more time.

2 And I'll say the same thing for Google. If Google
3 feels like it can file its reply within the time period
4 that's already in the scheduling order, we'll proceed in that
5 manner, but I will certainly be open to an extension request
6 from Google that mirrors the time frame that is set forth in
7 the scheduling order.

8 The other thing I wanted to note is I am assuming
9 that one or both sides are going to want oral argument on the
10 dismissal motions.

11 Mr. Lanier, is that fair for your side?

12 MR. LANIER: Your Honor, I don't know that we're
13 going to necessarily need it. I think we're good with our
14 reply date. We'll need to see what they bring up. But it's
15 whatever your preference is. If you've got questions, we'll
16 answer them. But, I mean, it's clear you don't need us to
17 regurgitate briefs.

18 THE COURT: Mr. Yetter, what about for Google? Do
19 you think you're going to want a hearing on the dismissal
20 motions?

21 MR. YETTER: Yes, we are, Your Honor. We
22 appreciate the Court bringing up the topic.

23 Let me go back a little bit on a couple of points
24 that the Court made on the extra time. The States approached
25 us about six extra days for their response brief for the

1 12(b)(6) motion. We obviously agreed with that. We have
2 talked with them about six extra days on our reply brief, as
3 the Court thought we might, and we will be filing a motion --
4 and it's been agreed -- and we will be filing a motion with
5 the Court so that the Court can consider whether to allow
6 that. We hope the Court will.

7 And the last point on following the local rules, we
8 know the Court in this district local rules are very
9 important. That was on me. I just misread the local rules.
10 And so it will not happen again at least intentionally,
11 Judge. We're going to follow the local rules very carefully.

12 So to answer the question that you had, yes, we
13 would like oral argument. We think it would be helpful for
14 the Court. These are both -- this is obviously a
15 complicated, significant case, these are significant motions,
16 and we would like that opportunity if the Court allows it.

17 THE COURT: All right. Thank you, Mr. Yetter. I
18 think what I'll do -- you can anticipate that probably
19 Ms. Munoz will be reaching out to you all for potential dates
20 for a hearing, likely -- you know, likely in March, and we
21 could potentially do it around the time we have our status
22 conference. And if it's -- and/or if the parties think it's
23 better to have a different date or push that a little more,
24 we're welcome to hear from both sides on that issue.

25 So moving from the motion to dismiss to something I

1 wanted to raise with you all just about these status
2 conferences. I think it was a great -- these are very
3 helpful for the Court. I think they're helpful for the
4 parties. And I think it may be even more helpful, but I
5 would like to hear from counsel for both sides, if some
6 period of time before the conference, I'm thinking maybe
7 seven days in advance, the parties can identify -- and you
8 can do it by letter or advisory -- topics that you think
9 should be addressed at the status conference.

10 And what I'd say, not to -- so that there's not too
11 much burden put on the parties, is that you limit it to I'd
12 say no more than a paragraph describing what the issue is --
13 it could be a sentence, it could be a paragraph -- something
14 that just you think will be sufficient to put the Court on
15 notice of what that issue is.

16 And then if either party thinks, you know, that you
17 need some sort of further submission on that, then I'm, you
18 know, welcome for you to tee that up as well. Let me get
19 your -- I think that will be helpful for everybody. I know
20 it will be helpful for me.

21 So Mr. Lanier, any comment from the States on that.

22 MR. LANIER: Yes, Your Honor. I think it's a great
23 idea. I think it's very easy to do it in the form in which
24 you suggested. I think an alternative idea that would not be
25 too burdensome on the parties is for us to get on some type

1 of meet-and-confer basis and do a joint submission where
2 we're able to say to you, Here is an agenda that we think
3 will be useful for your status conference. These are issues
4 Google wants dealt with. These are issues that the States
5 want dealt with. These are issues both want dealt with,
6 whatever it may be. But there's no reason we should not be
7 able to come up with a joint report to you seven days out
8 from your hearing that tells you, Here's our suggested agenda
9 for the conference, obviously with anything else the Court
10 might want. But from the parties' perspective, I think we
11 could coordinate that very easily with them. We have no
12 trouble coordinating with them. On that level, we get along
13 fine.

14 THE COURT: All right. Great. I think it's a good
15 suggestion. It can be, as with so many other things you're
16 submitting, jointly or separately as needed.

17 Mr. Yetter, any thoughts?

18 MR. YETTER: As always -- well, maybe not as
19 always, but counsel comes up with a good idea as usually. He
20 came up with a very good idea. And we can work together on
21 this, Your Honor. Even if the sides don't agree on, These
22 are the topics we should talk about, both sides can say, We
23 want to talk about this one and that one. At least then you
24 just get one submission.

25 And the one thing I would caution, I hope that

1 doesn't turn into, is basically circumventing the Court's
2 normal process for motions and especially discovery issues
3 and things like this. I'm assuming that this would be we're
4 raising a topic we wanted to alert the Court about, and the
5 Court will then decide, Okay, this is how we're going to deal
6 with it. You're either going to have to file a motion or I'm
7 going to deal with it in some other way.

8 THE COURT: Right. That's a good point,
9 Mr. Yetter. As I alluded to earlier, I don't want this to
10 become a free for all of now, you know, we're making all
11 kinds of submissions. It really is designed simply to
12 identify topics for discussion. And my thought is, really,
13 if we needed to have any kind of briefing on something that
14 is outside the realm of what's contemplated in the scheduling
15 order, that's something we discuss at the status conference.
16 If it's something that for whatever exigent reason needs --
17 there needs to be filings on it, then the parties can ask for
18 leave to do that.

19 MR. YETTER: That makes good sense, Your Honor.

20 THE COURT: So we'll implement that. I'll do an
21 order on that shortly so that we have that for the March
22 status conference.

23 I did want to let you know, in terms of
24 coordination with the special master, you've probably noticed
25 I think that the special master put out an order that, you

1 know, he's having meetings with you all about at least twice
2 a month. We have coordinated so that at least some of those
3 meetings, for the ease of the parties and anybody who is
4 having to travel, can occur at the time we do our status
5 conferences.

6 So, you know, for example, all of the next at least
7 three status conferences that we have will be followed by
8 meetings with the special master. And I want to let you all
9 know that the plan is for those meetings to be in our jury
10 assembly room, which is literally right next door. So you
11 can literally walk out of here, go in there, and you can have
12 a conference with the special master.

13 All right. That brings me to just having a bit of
14 discussion with you about where discovery is at the moment.
15 And, obviously, we have the special master in place. And
16 from everything that I've seen, the parties have really
17 engaged with that process. And I appreciate that, that
18 you've engaged with that process.

19 You know, I note that I'm reading obviously all
20 these filings. Everything you're filing with the special
21 master, I'm seeing all of that. And so for both sides, I
22 want to make a couple of just overarching comments, and I
23 don't want them to be taken as I'm taking one side's view or
24 the other side's view of discovery. It's more where I see
25 issues identified that I want to make a comment on them.

1 So I will note first on the States' side of the
2 ledger, so to speak, on discovery, you know, I've seen a
3 number of filings from Google that are complaining, you know,
4 that are raising issues about the States' engagement with
5 discovery, the production of documents and privilege logs and
6 that. And I think it goes without saying that given the
7 discovery schedule we have, to the extent that all of the
8 states that are part of this coalition have not been fully
9 engaged in doing what they need to do in terms of discovery,
10 whether it's initial disclosures or response to discovery,
11 that really needs to be addressed. And particularly given
12 the schedule in this case and the deposition practice that's
13 going to be ongoing, and needing to sort out document issues
14 and privilege issues in as timely a manner as possible, it's
15 going to be very important that the States are doing their
16 part on discovery.

17 And, look, I recognize that in a case like this,
18 given the claims and given the parties, there is going to be
19 some asymmetry in the discovery that's going to happen. In
20 the documents and the ESI that's going to be produced by each
21 side, there's going to be asymmetry. There's going to be,
22 and has been, a lot more being produced, you know, by Google.
23 But the States still have their own records that are relevant
24 and their own information that's relevant. And I want to
25 make sure the States are focused on providing all that to

1 Google in as timely a manner as possible.

2 On the Google side of the ledger, I'll say that,
3 you know, everyone in this courtroom acknowledges that there
4 has been a tremendous amount of documents produced -- I don't
5 know if the number is six million at this point, that's the
6 number I see thrown around -- but I think it's important for
7 everyone to recognize that the mere fact that a certain
8 number of documents has been produced does not necessarily
9 mean So we're done, or, We're effectively done with document
10 production, if there are more materials that are relevant and
11 that should be produced.

12 I understand that it is a marker, it's an important
13 data point, but I don't think it means that we're necessarily
14 at the end of the road. I think the consideration remains if
15 there are discovery requests that are out there that are
16 relevant that are appropriate, that production of materials
17 and information is still on the table.

18 Those are just overarching observations.

19 Two other things I want to note on discovery. One
20 is that I don't know if this is necessary -- I think this
21 is -- well, I know this is covered somewhat in the report and
22 recommendation, but I will say that with regard to non-party
23 Meta in this case, if the States are going to want to do
24 discovery, I do think you're going to need to do a motion.
25 Just to be clear, I think you'll need to do a motion.

1 The other point I want to raise has to do with --
2 again, this is discovery related -- in your filings, this is
3 your briefing to the special master in advance of this
4 February 22 conference with the special master, there is a
5 lot of back and forth, but I'll say maybe more so on the
6 States' side, in terms of talking about issues with regard to
7 things like the dashboards, things like some of the I guess
8 you would call it the technical documents and those
9 materials. And it feels like there is back and forth about
10 what records Google has, what records Google keeps, whether
11 it's ESI format or otherwise. And at least in the States'
12 filing, there are reflections of what's happened in
13 meet-and-confer discussions about that.

14 And in order to approach these types of areas of
15 discovery most efficiently -- and I think this goes both
16 ways. By the way, I think there are issues that Google has
17 raised that also call this to mind. I don't know if the
18 parties have considered this. I don't know if the parties
19 have already had discussions about this. But I would at
20 least suggest that the parties think about records custodian
21 depositions.

22 And those kinds of depositions -- this is a general
23 matter, particularly in complex litigation -- can be
24 extremely helpful, they can be extremely useful in moving
25 things forward. And I'll just put this on the table. They

1 can, in many instances, sort of take out that middleman of
2 you're working through the other side's counsel about what
3 they have and where they have it and what it looks like, and
4 you're going back and forth and back and forth and back and
5 forth. And you take a records custodian or more than one
6 records custodian depositions and you're kind of cutting out
7 the middleman. You're getting straight to the heart of
8 what's there.

9 My concern about, you know, endless -- or not
10 endless back-and-forths, but back-and-forths that don't
11 get -- don't make a lot of progress is that they can really
12 drag out the discovery process. And let's face it, the
13 discovery deadlines we have in this case are ambitious. I
14 think they are doable for the parties. But I do think that
15 looking at something like record custodian depositions might
16 be very wise for the parties.

17 And if it means that -- and I mean for both sides.
18 I mean, I can see Google wanting them. I can see the States
19 wanting them. I think it might be very helpful moving this
20 forward. So I'm going to suggest to the parties that you
21 think about doing that and talk to the special master about
22 doing that if you would like.

23 But if it means we also need to do any adjustments
24 on depositions or numbers, you know, I'm open to hearing
25 that. Although, I think the parties have a pretty good

1 amount of depositions already available. So I will -- I will
2 say this, even though I probably don't need to say it, the
3 key to those depositions is having the right person or
4 people; right? Those kind of depositions work when you have
5 the right people.

6 Let me see. I think -- all right. I think that
7 covered what I wanted to say about discovery. So let me open
8 it up. First of all, I will hear from both sides on the
9 topics I visited about on discovery. If there's anything you
10 want to say about those, I'll hear from both sides on that.
11 And then I'll ask you if there's any other topics you want to
12 hit on.

13 Mr. Lanier.

14 MR. LANIER: Thank you, Your Honor. First of all,
15 I wrote down you giving us four matters, in my enumeration.

16 Number one. We better have our house in order and
17 all of the states better be doing their discovery
18 obligations. I wrote mine in all caps and underlined it.
19 The message has been received. Number two -- and I don't
20 want my side to think that I failed to state that, you know,
21 that they're working hard, they've been producing. We just
22 produced a boatload more and all of that kind of mess. I
23 understand that. But your statement in and of itself is
24 understood and the message has been communicated. Thank you
25 for it.

1 Number two. Google's produced a lot of documents
2 but it doesn't mean that it's done. If it's relevant, it
3 should be produced. Thank you for that. We do continue to
4 struggle with them, but I will save those struggles right now
5 for Special Master Moran because that's where you've placed
6 those struggles, and he's on top of it.

7 Number three. If States want a Meta discovery,
8 then States are going to need to do a motion. Thank you for
9 that insight. We'll proceed under those circumstances. I
10 have no argument with that.

11 Number four. Take record custodian depositions. You
12 would almost think you've practiced law before you went on
13 the bench. You're right. That's what we are planning to do.
14 That's the right thing to do. We will proceed. I know that
15 next week we're putting out a number of 30(b)(6) deposition
16 notices. And I will make certain that the record custodian
17 depositions are moved to the front of the line because that is our
18 back-and-forth argument, and so we will get moving on that as
19 well.

20 THE COURT: Let me comment on that quickly because
21 I think that's exactly what I'm -- what my thought was that
22 maybe it makes sense to front load those. Why? Because the
23 game here is to try to make sure that you've got everything
24 or nearly everything done on the document production and all
25 of this, at least as much as possible, at the time when you

1 start taking all of your other depositions, for reasons I'm
2 sure are obvious to the experienced counsel here.

3 MR. LANIER: It makes all the sense in the world.
4 And so it will be done, and you'll see, and you'll hear from
5 that as well.

6 As for your last statement, then are there any
7 additional issues, you have covered our waterfront, Your
8 Honor. So thank you for that.

9 THE COURT: All right. Great.

10 Okay. So Mr. Yetter, let me get your comments on
11 sort of this group of discovery thoughts, issues.

12 MR. YETTER: Yes. Thank you, Your Honor.

13 Your first point was about -- was about engagement
14 by the States, and this is an issue that -- this is one of
15 the issues that we wanted to raise today, and we appreciate
16 the Court raising it.

17 You may or may not remember, but almost three years
18 ago to the day, we had a status conference before the Court.
19 Most of the same people were here. And one of the things
20 that the Court brought up was that you understood, given your
21 practice, that multi-state litigation can sometimes be a hard
22 thing to manage on both sides, certainly for the States to
23 speak as one voice, and then for the other side, the opposing
24 side, in this case Google, to hear and to coordinate with one
25 voice.

1 And at the time -- this is in the status conference
2 of February 4th, 2021 -- you suggested that the States should
3 create or implement or adopt protocols so that all the States
4 could sign off on agreements, and that you were looking to
5 Texas as the lead state to make sure that's happened. And
6 the counsel for the States said that -- he pledged that
7 Google wouldn't have to check with every single state, they
8 wouldn't have to be -- when they were making agreements, and
9 that Texas would act akin to a liaison counsel in the MDL.

10 The reason I say all this is that three years
11 later, we're still having this issue of herding cats. We
12 have brought this up with the special master, but it is
13 something that I wanted to raise with the Court here because
14 it isn't just a discovery issue. One example, a recent
15 example, and this is a discovery matter, but on Monday, the
16 States called us and said they wanted to confer about some of
17 the issues they had with discovery. And we, in turn, said,
18 okay, we'll be prepared, and we want to talk about some of
19 the issues we have with the States' production.

20 And when we got together on Monday, there was a
21 group of representatives of counsel for the States and they
22 were prepared to talk about what they wanted from Google, but
23 they told us one of the Texas Attorney General -- Assistant
24 Attorney Generals wasn't there and so they couldn't talk
25 about the discovery that Google wanted from the -- or the

1 issues that Google were raising with the States. And we
2 rescheduled it finally for tomorrow. So we're going to get
3 together with them for tomorrow.

4 And I'm not complaining that counsel did anything
5 wrong. But they don't have a protocol yet, Your Honor. We
6 are at times not even able to confer about issues because
7 either that lawyer -- and this is a lawyer just for the State
8 of Texas -- is not available or the lawyers for the States
9 are not available.

10 So I wanted to raise that with the Court for the
11 Court to give some thought to encouraging or maybe even
12 directing the States to reach some consensus among the States
13 so that we know -- Google knows -- when we're talking to this
14 representative or this counsel, they are talking on behalf of
15 all the States, or whether we need to go state by state. So
16 17 states, it would make it less efficient, but that is still
17 an issue three years later. So that was your point number
18 one.

19 Your point number two. We heard it. We understand
20 that if there is relevant discovery left, that Google will
21 focus on that. Google's position for much of the new
22 discovery that we've gotten is that it's already been
23 produced. But we've heard the Court's comments and we will
24 certainly take them to heart.

25 The Meta issue, number three, is an issue really

1 more for the plaintiffs. The Court knows the situation with
2 Meta.

3 And issue number four. I do want to pause a little
4 bit more on that, and this is about the records custodians.
5 And we too -- as counsel said they would be doing, the States
6 would be doing, we too plan on getting out 30(b)6) notices in
7 the next week or two, before the end of the month, hoping to
8 have depositions -- 30(b)6) depositions in March. Records
9 certainly will be one of our topics. And so we will be
10 working on that as well, as well as other topics.

11 And the reason -- and I want to explain one reason
12 why we are going to be going the 30(b)6) route, Your Honor.
13 And this is kind of late-breaking news and I'm raising it
14 with the Court because this is something that the Court --
15 this is an issue that the Court has gone over before and it
16 relates to one of the pending motions to dismiss. Last
17 night, just as is often the case -- and counsel pointed this
18 out in an earlier status conference, the day before or the
19 days before a status conference there's a lot of scurrying
20 around. And yesterday, before today's conference, we got,
21 for the first time, counsel for Louisiana and North Dakota --
22 maybe not the first time, but they reached out and produced
23 documents, 158 documents from Louisiana and 160 documents
24 from North Dakota. None of the other 17 states produced any
25 more documents, in light of despite all the recent back and

1 forth between the parties. And late last night, just about
2 quarter to midnight, we got new discovery responses from all
3 17 states that were served on us.

4 And the reason I'm bringing it up, Your Honor, and
5 the reason why it relates to the pending standing motion, the
6 jurisdictional motion to dismiss, is you might recall that
7 originally in this case counsel for the States said that they
8 were proceeding all in *parens patriae*, on behalf of every
9 consumer, every advertiser, every publisher; that was in
10 November of 2022 counsel said that -- in 2021 counsel said
11 that.

12 And then just last November of 2023, counsel
13 said -- talked about the who, what, when, where, and he said
14 they're, quote, "all of the above." This was in November.

15 Then in December, they filed new -- the States, all
16 17, filed new discovery responses and they changed that and
17 they said that 11 states of the 17 were not proceeding in
18 *parens patriae*, but only as sovereigns. That was in
19 responses on December the 6th, 2023.

20 And then we had a hearing about a week later, on
21 December the 14th, 2023, and this issue came up. And counsel
22 for the States said that Google had complained because of --
23 and I'm quoting from the transcript at pages 49 and 50, that
24 Google had complained "because of the *parens patriae* issue
25 and the way we have narrowed and ferreted that down. And we

1 have. We have been very careful."

2 "Now, Texas at this point has a policy in the
3 Attorney General's office where they are not pursuing things
4 under parens patriae like this. And so we've made that
5 adjustment and made that clear, and we have informed them of
6 that."

7 And they did. The interrogatory answers said that
8 11 of the states of the 17 were not proceeding in parens
9 patriae. One state was doing both, and five states were only
10 proceeding in parens patriae, not sovereign.

11 I know this is a long lead up, Your Honor. But
12 last night, we got new discovery responses that did a
13 complete 180, and now all 17 states are proceeding in parens
14 patriae. This is after we filed our jurisdictional motion.

15 And this is -- I will say this is one of the
16 concerns that we have raised more than once is the States
17 have not been willing to pin down where they're at. And now
18 they have completely changed. Tomorrow they're -- today
19 they're going to file their response to the jurisdiction
20 motion. And just last night, they completely changed their
21 factual basis and their interrogatory answers.

22 So that's a very significant thing from our
23 perspective, Your Honor. And one of the issues that has
24 caused us -- has delayed our own discovery is we don't know
25 where the States are. And so these are very detailed. I

1 believe it was a 96-page supplemental interrogatory answer
2 with two appendices, and we are still digesting it. But
3 there's a tremendous amount in there that, three years into
4 the case, we are just learning and that is different from 60
5 days ago.

6 THE COURT: So I want to make sure I understand
7 this sort of chronology from Google's standpoint, because I
8 certainly will be visiting with Mr. Lanier. At the time that
9 you filed your 12(b)(1) motion, your understanding was eleven
10 states were proceeding basically as the State qua State,
11 we'll call it sovereign capacity, five states were proceeding
12 only in a parens patriae. So I say only as the State qua
13 State. Five states proceeding under parens patriae, and one
14 state proceeding on both grounds, that was at least your
15 understanding at the time you were filing that, which is, you
16 know, about a month ago.

17 MR. YETTER: Correct, Your Honor. And that one
18 state was Nevada, and this comes from their interrogatory
19 answers on December the 6th, 2023.

20 THE COURT: All right. And now, as of yesterday,
21 you're saying that the newest information you have is that
22 now all 17 are proceeding under parens patriae. Any other
23 changes?

24 MR. YETTER: Your Honor, there may be lots of other
25 changes. We just haven't been able to kind of really digest

1 the new supplemental interrogatory answers. But that's one
2 of the things we focused on. And it's clear because
3 they're -- the remedies that they're seeking, they make it
4 clear whether it's in the parens patriae capacity or in a
5 sovereign capacity. And so that's how we could at least
6 quickly be able to convey to the Court that now all of the
7 states, all 17, have some claims and some relief that they
8 are seeking in the capacity of parens patriae.

9 THE COURT: All right.

10 MR. YETTER: Okay. That issue, Your Honor, we
11 raise it only because it could well have a very -- we don't
12 know what their response to the jurisdictional motion's going
13 to be. But under Rule 37, we don't think you're able to
14 withhold information and then use information that's untimely
15 disclosed in response to a motion. We don't know. I'm
16 not -- that may be premature to say what they're going to do
17 with it. But at least it is a significant pivot again, a
18 late-breaking change that has impacted our process of
19 discovery, and we wanted to make sure the Court was aware of
20 it.

21 THE COURT: All right.

22 MR. YETTER: And with that, with those two points
23 about the meet and confer process, kind of herding the cats
24 point, and the change in position on who they represent,
25 that's all the issues that we have, Your Honor, on behalf of

1 Google.

2 THE COURT: All right. Thank you, Mr. Yetter.

3 So Mr. Lanier, let me give you an opportunity to
4 respond to both of those issues in either order that you
5 want. So the one I'm going to call -- we'll call it protocol
6 issue, we can talk about that, and then the other would be
7 addressing sort of the chronology of the capacities in which
8 the states are proceeding and, you know, where we stand
9 today.

10 MR. LANIER: Thank you, Your Honor. And I
11 appreciate the chance to respond. I'll take them in that
12 order.

13 The first one, I think the assertion that the State
14 of Texas has failed in its responsibility to herd cats is,
15 um, not only what I would term in my Lubbock jargon as a
16 little ticky-tack, but I would also say be real careful with
17 what judgment you throw rocks, because this was brought up in
18 the special master conference that we had with David Moran,
19 and in that, Mr. Yetter again complained that the States
20 seemed to have to go back and get authority from 17 different
21 states to state a position.

22 And about 15 minutes later in the conference, the
23 judge said, "well, are you agreeable to doing these expert --
24 this discovery in this deadline in this timeline?"

25 And I said, "Absolutely."

1 And he said, "Google, are you agreeable?"

2 "Well, we've got to go back and get authority. We
3 don't have authority."

4 In the same conversation where they've argued that
5 the State doesn't show up with authority from 17 different
6 clients, they don't often have authority for one. I cannot
7 list the number of meet and confers that we've had where they
8 say, "Well, we can't decide that," in a meet and confer where
9 the whole purpose of such is they've got to go back and get
10 clearance from their clients.

11 So to insinuate the States are off base and to use
12 as an example what happened with this recent call which, if
13 I'm understanding -- and I'll clarify, I wasn't on the call,
14 but I'm given some pretty good notes from my team, and the
15 notes from my team say that the agenda items that Google
16 wanted addressed by Mr. Young -- Trevor Young, who was not on
17 the call -- were brought to our attention an hour before the
18 call when the call had been scheduled for three days. And so
19 Mr. Young didn't have any need to be on the call as it has
20 originally been scheduled as a meet and confer. But then the
21 new matters get added on an hour beforehand, and it's too
22 late for him to get on the call. So the call has been
23 rescheduled for tomorrow. To bring that to your attention,
24 for me, is ticky-tack. But I will say this, that we have
25 worked hard to have authority in the places where we can have

1 it.

2 So, for example, Google sends out 17 different
3 discovery letters. Texas coordinates and gives all 17 in a
4 single response. There have been delays in getting
5 everything figured out. That is part and parcel of this
6 process. That's not something that's new to us. That's not
7 something unique to Google -- I mean, to the States. It's
8 certainly an issue for Google as well. And here I'm bleeding
9 over into the parens patriae argument.

10 But we live in a world where lawyers are doing the
11 best they can in a complicated case. And so we'll have
12 Mr. Yetter, for example, at the last hearing say, quote,
13 "Disputes the DOJ raised got resolved. How dare Lanier raise
14 these disputes."

15 "Where the DOJ" -- this is a quote, on transcript,
16 page 10, January 18th, "Where the DOJ raised some concerns,
17 Google addressed them and the DOJ dropped them."

18 And we turn around and go back to the DOJ, and the
19 DOJ says to us, "Oh, no, we're still having meet and confers
20 over those this week."

21 I'm not throwing that at Mr. Yetter's feet saying
22 that he was misrepresenting to the Court on purpose, but
23 those are ticky-tack things; that one of the reasons
24 Mr. Moran exists in this world is to try and navigate through
25 these things. It's the continual resculpting of the timeline

1 that is done by Google.

2 Where we filed the case in 2020, but they point out
3 we don't do discovery in 2021 and never tell anybody, that's
4 because they moved on the JPML and all discovery was stayed.
5 And we move into 2022 and we don't do discovery. Well,
6 that's because there's briefing in the MDL from January until
7 September. And our requests for production aren't even
8 allowed to be filed until January of 2023. And then Google
9 doesn't start producing documents until May, and they just
10 give us what they gave the DOJ.

11 And so, yes, we're trying to figure out all of
12 these things and we're trying to make sure we make the best
13 representations to the Court we can. We load and review
14 their documents in June and July of last year, and we start
15 taking depositions. But then we stopped in August because we
16 find out they've got 16.1 million new documents. And we
17 didn't start with the custodian depos like we should have.

18 And then in September, October, they produced
19 another 12 million pages. We load those documents in in
20 November. We file our DTPA document request and discovery
21 November 10th; it's still unanswered.

22 And so in the midst of that to say, Well, yes, but
23 when you supplemented your discovery, you refined your claims
24 somewhat and didn't have them, you know -- okay, fine. We'll
25 go yell at the attorney general for Idaho for changing their

1 minds or finding out something different.

2 I mean, we're doing the absolute best we can. And
3 to say that this has altered the discovery to be done by
4 Google, to me -- I won't say it's disingenuous, but I will
5 say it shouldn't. And if it's altered their discovery in
6 some way, I'd like the specifics of how it's altered it,
7 because I'm glad to try and help sculpt an appropriate remedy
8 for them. It doesn't need to be brought to your attention
9 until we've had a meet and confer on it.

10 And I'm glad to figure out how we have altered
11 their discovery because of the change in what's *parens*
12 *patriae* and what's not. And if they will tell us how we have
13 altered their discovery, we will try and shape an appropriate
14 remedy. But, I mean, my response is that this is not what we
15 should be arguing about in your court, in my opinion, right
16 now. Thank you.

17 THE COURT: All right. Before I comment,
18 Mr. Yetter, do you -- would you like any rebuttal on that?

19 MR. YETTER: Very, very briefly, Your Honor.

20 I -- obviously, counsel feels aggrieved about
21 various things, but it really doesn't change the fact that we
22 really need a protocol on behalf on the side of the States to
23 allow us to know who to deal with. We did send 17 different
24 discovery deficiency letters because at one point we just
25 decided we needed to deal individually with 17 different

1 states. That's inefficient, it's time consuming, and it's
2 reflective of the fact that the States don't have a protocol
3 right now for coordinating. We would welcome that. We would
4 welcome the Court's guidance or even direction to the States
5 to do their best to coordinate so that we know who we're
6 dealing with.

7 This issue is something we have raised, as the
8 Court probably knows. We've raised it with the discovery
9 master. That was one of the very first issues we raised with
10 the discovery master because we were not making any progress
11 just specifically on discovery in the meet and confers
12 because we were not finding people on the States side that
13 could speak on behalf of all of the States.

14 This is not an issue of whether you can agree on
15 the spot or not. It's an issue of whether you're a
16 representative of that whole side of the case. We don't
17 expect either side to agree on the spot to any new issues
18 that are brought up, but at least you should be able to
19 negotiate on that behalf.

20 And lastly, or secondly, on the change in position
21 of the States from sovereign, to not sovereign, to parens, to
22 not parens, that's a fundamental issue in this case. It
23 changes everything about the case. It changes our discovery.
24 It changes our motion practice. It certainly changes what we
25 could expect to see at trial.

1 It is not clear -- although we haven't fully
2 digested the new discovery responses, when the States now say
3 despite the Texas policy that it's not going to proceed in
4 *parens patriae*, all the States are, but at least at this
5 stage it's not entirely clear. Are they representing all
6 advertisers in the states? All publishers in the states?
7 All the users or consumers? And that generates a tremendous
8 amount of discovery from our end. Or, you know, we thought
9 that most of the states were proceeding as sovereigns, which
10 means we're just dealing with them as a government, which
11 made their lack of documents that they produced more
12 confusing because if, as a government, they're using
13 advertising technology products, there should be some
14 documents about that.

15 But the bottom line is as of last night, all of
16 this is back up in the air because we now have a completely
17 different position. So we raise this with the Court because
18 this is something that's been discussed with the Court more
19 than once. It's something that we think may affect the
20 current pending jurisdictional motion, and it's something
21 that clearly affects this case going forward. So that's the
22 only other comments we have.

23 THE COURT: Let me ask you a question, Mr. Yetter,
24 just in terms of when you're sending out discovery requests
25 or if you're sending out notices, are those ones that you

1 have been and anticipate that you're just going to send them
2 to Texas counsel, even if it's, let's say, you send
3 requests -- let's say they're RFPs and you want them from all
4 the States, the same types of materials. Are you able to
5 just send that to Mr. Lanier and say, "These are requests
6 that we need this stuff from all the states," and then you're
7 able to get responses to that? Or what you're saying is
8 there is a problem on the receiving end where you have to be
9 then in contact with the individual states.

10 MR. YETTER: Yes, Your Honor. It is not hard to --
11 I don't believe we've had any trouble sending discovery to
12 all the States through one point of contact, through the
13 current counsel here. But it's getting back answers from all
14 the states, and then discussing with them where we think
15 there are deficiencies or gaps, or just asking why the
16 response has been so meager.

17 A good example is the privilege logs, Your Honor.
18 As the Court has read, there are 17 states, and only 2 of
19 them have given us any privilege log at all, so 15 haven't
20 given us any privilege logs. And we've tried to deal with
21 counsel here, you know, liaison counsel, so to speak, but we
22 haven't gotten any progress on that. And so we finally
23 decided -- this was in the last six weeks -- to send out
24 individual deficiency letters on the discovery that we sent
25 common to all the states, to each of the states, one by one,

1 to 17 different states.

2 So the issue is not sending it as much as getting
3 back responsive -- responses from each of the States and then
4 being able to dialogue on those responses.

5 THE COURT: All right. But I take it you haven't
6 had any state or states indicate to you that something Texas
7 represented or something Texas said they don't agree with,
8 they're not going to do it, or they have a different
9 position. It's more just that when you're seeing these
10 deficiencies from particular states to particular discovery
11 requests, that, I suppose from a feeling of efficiency, you
12 would want to direct those to the states directly. Is that
13 fair, or am I misunderstanding that?

14 MR. YETTER: Yes, Your Honor. Mr. McCallum can --
15 he's been more on the front lines on that, and I will let him
16 address that specific question.

17 THE COURT: Mr. McCallum, just so you know where
18 I'm going with this -- and you can come up, Mr. McCallum --
19 where I'm going with this because you'd want to follow up
20 with Mr. Lanier, you know, there are some of these things
21 that it's I would suppose understandable that there needs to
22 be some coordination. Let's say that it has to do with
23 privilege logs for, you know, the State of Utah or something.
24 And Texas could be, you know, still leading the group, but
25 there's going to need to be somebody from Utah likely

1 involved in that, and so certain of the aspects of this are
2 going to involve that. But what I'm wondering is whether or
3 not there are problems writ large with just, you know, states
4 basically balking at what Texas has promised or what Texas
5 has said the States will do.

6 I guess what I'm looking for is do you have
7 specific instances where there's problems created because it
8 appears the States are not actually working under the
9 guidance of Texas to complete discovery.

10 MR. MCCALLUM: I can point to one very specific
11 example, Your Honor, which is back in January of 2023 when we
12 issued our initial requests for production on the plaintiffs
13 in the MDL, when the States were still a part of the MDL, and
14 we did think we had an understanding with Texas that we had
15 an e-mail agreement that we could serve discovery requests on
16 Texas and that service on Texas would be good as to service
17 on all states.

18 And then we had an issue when none of the 17 states
19 timely responded to any of our requests for production or our
20 interrogatories. There was some confusion that followed and
21 some discussion, and a number of the states did, in fact,
22 reach out to us and say that while Texas may function as
23 their liaison for certain purposes, they were not authorized
24 to accept service of discovery and certain other documents on
25 their behalf. And so we have had some issues getting in

1 touch with various states about these --

2 THE COURT: Do you recall how many states that was?

3 MR. MCCALLUM: It was somewhere in the order of
4 three or four, but I would have to go back and check that,
5 Your Honor.

6 THE COURT: All right. That's helpful.

7 Anything else you wanted to say?

8 MR. MCCALLUM: No. I mean, we're happy to work
9 with the States to try and work out these sorts of
10 coordination issues. I mean, the most recent example is the
11 one that Mr. Yetter pointed out on Monday of this week where
12 again we were hoping to engage with all of the states on the
13 requests we had of them, and that meeting has been postponed
14 until Friday. So we would very much like to work with the
15 States to work out these protocol issues, perhaps with the
16 guidance and/or direction of the Court. But I'll leave it
17 there unless the Court has any questions.

18 THE COURT: And the most recent materials you got
19 yesterday, for example, that had the change on *parens*
20 *patriae*, I take it that's something that came from Texas on
21 behalf of all those states.

22 MR. MCCALLUM: That's correct. It was sent by the
23 Texas OAG.

24 THE COURT: All right. Thank you, Mr. McCallum.

25 Thank you, Mr. Yetter.

1 All right, Mr. Lanier. Yeah, I would like to hear
2 comments -- you know, let me just elaborate on the point I
3 was exploring with Mr. McCallum, which is that understanding
4 that with 17 states, there are going to be aspects of how
5 discovery is conducted that's going to require whether if
6 it's from the attorney general's office or somebody from that
7 particular state to have involvement. I use the example of
8 privilege issues, for example, but I'm sure there's any
9 number of others.

10 But it is obviously important for efficiency
11 purposes that Texas is able to confirm that other than where
12 there are specific issues that require, you know, individual
13 state's involvement, participation, that Texas is able to
14 coordinate, obviously, not just the receipt of discovery
15 requests, but also the delivery then of those discovery
16 responses, and then also, you know, we're going to be
17 coordinating depositions. And can Texas, you know, do that
18 without issue.

19 So I would like to get your comments on that. And
20 I don't know if you have got any kind of a protocol or MOU or
21 something like that among the states on these issues. But if
22 you could speak to that, and then maybe speak to the point
23 Mr. McCallum made about, well, we've had at least one
24 incident, or one or two incidents where you had some states
25 that were saying, you know, "Texas doesn't speak for us on

1 this."

2 MR. LANIER: Yes. Okay, Your Honor. I'll break
3 this out and try to provide the structure you asked for
4 first, and then I'll deal with the examples.

5 The structure that we've got is we, the Lanier Law
6 Firm and I believe probably the Keller Postman firm as well,
7 represent basically a handful of states as counsel. We are
8 retained counsel, so we certainly speak on behalf of those
9 states.

10 A number of other states have not retained us, but
11 have given us authority to shepherd the litigation within
12 their oversight. An example for that might be the State of
13 Alaska. And so the State of Alaska has participated in
14 certain aspects of this case development, even though we do
15 not directly represent the State of Alaska.

16 In those situations, Mr. Trevor Young, who has been
17 careful to try to be here at each of your hearings,
18 Mr. Trevor Young is, within the OAG office of Texas, in
19 charge of interfacing with all of the states and has
20 representatives from all OAG offices that he interacts with.
21 So if there is a need for authority, if there is a need for
22 any coordination, Mr. Young sees to that, and he's done so
23 quite effectively, considering all that's gone on.

24 Having said that, your probing of an example from
25 Mr. Yetter, which was then addressed by Mr. McCallum, of in

1 January of 2023 they thought that service on Texas was
2 service on all, and several states, three or four, said that
3 Texas is not authorized to receive their discovery, there's
4 no question but that there are states who are entitled to get
5 the discovery themselves, in spite of the fact we're trying
6 to coordinate the best that we can. We can't suddenly expect
7 an attorney general in another state to tell Ken Paxton "You
8 have the authority to receive discovery and to bind me."

9 There are politics involved. There are state
10 issues involved. And so we -- if I have ever represented to
11 the Court that Ken Paxton has the ability to make decisions
12 and to take on all of those filings on behalf of everyone,
13 then shame, shame on me. I certainly never meant to make
14 that.

15 What I did mean to say is that Texas would work on
16 being the coordinating factor with these various States so
17 that you don't have to have a hearing with 17 AG reps in here
18 standing up to the microphone, each taking their turn.

19 By the same token, when we've had the meet and
20 confers, we don't have 17 state AG offices on the meet and
21 confers because we don't need them on that. There are times
22 where we've got to say, "We will go find out," just as
23 Google's lawyers have to say, "We will go find out," from
24 Google, their actual client, as opposed to ours where we
25 serve in a coordinating capacity.

1 So I think it's working. It may not work as tidily
2 as everyone may like. But to the extent that Google was able
3 to serve their discovery, they served it on all 17. We gave
4 a concerted united response combining all 17 into one
5 response. We're doing the best we can to help facilitate.

6 Google has deficiency letters. Mr. Yetter is
7 correct. Those deficiency letters should be tailored to each
8 state. If there is a complaint that State of Louisiana is
9 deficient in A-B-C, that should be delineated in a letter.
10 And if we can't get an adequate response to that to them,
11 then they can deal with the State of Louisiana, or you can
12 call that judge -- or that AG into your court, or Special
13 Master Moran can call them onto the phone.

14 But a deficiency letter going to the state is the
15 right thing to do. And we'll take care of trying to tend to
16 that as best as we can. But the bottom line is, is we
17 represent only a handful of those states, even though we try
18 to coordinate between all 17. And, frankly, Mr. Young has
19 done an incredible job and I commend him in it.

20 THE COURT: All right. Thank you, Mr. Lanier.

21 All right. You know, I am going to state the
22 obvious here, which is we could obviously be in a situation
23 where each of these States was proceeding independently, they
24 could all have counsel in the room, or some of them might.
25 And so I know, as Mr. Yetter recalls, and as Mr. Lanier

1 recalled, we had discussions early on in this case about the
2 ability of Texas to coordinate with the other States and what
3 is the extent of that coordination.

4 And I don't know that it may not be helpful here to
5 go ahead and maybe have -- you know, maybe have an advisory,
6 I'm going to say if we have an advisory submitted by the
7 States that just walks through that, what Mr. Lanier just
8 very helpfully walked through, that the Lanier firm
9 represents a handful of states, including Texas; that Texas
10 through the Lanier firm and through folks working I think in
11 its own attorney general's office, has taken on a
12 coordination role. But then to understand the limits of that
13 coordination role, it may be helpful for an advisory with the
14 Court, and then the parties are on notice.

15 Look, I think that doesn't mean we're not going to
16 face some issues, particularly given the number of states
17 involved here. But that may be helpful in just making sure
18 everybody understands everybody's on the same page. And I
19 have no doubt issues are going to arise that may require help
20 from the special master or intervention from the Court. But
21 it seems like there may have been some confusion or there may
22 be some ongoing confusion about exactly the breadth and scope
23 of Texas's coordination with the other states.

24 And, look, this gets down into some of the granular
25 stuff; right? I mean, what kinds of agreements can Texas

1 make on behalf of all the states on discovery; right? That's
2 very important. There are issues we've talked about in terms
3 of acceptance of documents. So, you know, I will say on the
4 good side of the ledger, right, I haven't seen states coming
5 in -- or Texas, you know, there's a certificate of conference
6 that says the States don't have an issue with this and then,
7 you know, we have a state come in and say, "Wait a minute.
8 We don't agree to that." So but I do think an advisory maybe
9 helpful, so I may go ahead and ask for that to be submitted.

10 The other thing I will say that I want to make sure
11 the parties are aware of is with regard to this *parens*
12 *patriae* thing, I think everybody recognizes this is
13 significant in many ways in the case. That's why the States
14 have to carefully, carefully decide in what capacity or
15 capacities they're suing. So I think we all appreciate
16 that's important. And if, you know, alterations in where the
17 States are mean that we need supplements or additions to
18 briefing, or other things need to be done, you can certainly
19 have a motion practice on that. I'm going to be open to
20 that.

21 I don't need to tell anybody that the point we are
22 where we are in the case, you know, we want to tie down these
23 issues. They're very important both with regard to
24 dispositive motions -- and I can see them being significant
25 as you work through discovery in terms of the proof that's

1 being developed by the parties. So I naturally want to tie
2 that down, but I'll consider anything in regard to, if
3 there's motion practice, on needing to do some additional
4 briefing based on changes in the States' position. And I
5 also don't discount that discovery, the process of discovery,
6 could then have an effect on where the States are on these
7 issues. I recognize it could.

8 All right. Let me see. Anything else from
9 counsel? Mr. Lanier, anything else from the States?

10 MR. LANIER: No, Your Honor.

11 THE COURT: All right. Mr. Yetter, anything else
12 from Google?

13 MR. YETTER: No, Your Honor. Thank you for your
14 patience.

15 THE COURT: All right. We will stand in recess --
16 oh, before we do that, before we stand in recess, I do want
17 to say that I appreciate your advocacy. We have all of my
18 clerks in here, plus we have some judicial externs from SMU
19 Law School, and we told them to attend this hearing because
20 they are going to see the finest advocacy from very
21 experienced and accomplished lawyers. And so I thank you on
22 their behalf. I think it's a good -- you provide a good
23 example of fine advocacy.

24 MR. LANIER: Then I apologize for not letting
25 Mr. DeRose argue.

1 THE COURT: All right. We will now stand in
2 recess. Thank you.

3 THE COURT SECURITY OFFICER: All rise.

4 (Adjourned at 11:22 a.m.)

5 * * * * *

6 CERTIFICATE OF OFFICIAL REPORTER

7
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9 I, Gayle Wear, Federal Official Court Reporter, in
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11 District of Texas, do hereby certify that pursuant to Section
12 753, Title 28 United States Code, that the foregoing is a
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15 transcript page format is in conformance with the regulations
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18 Dated 18th day of February 2024.

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